for corporate acts done outside the state of charter. This result is reached in a Florida decision. *Taylor* v. *Branham*, 35 Fla. 297. Likewise an *ultra vires* act would seem to be impossible; the liability for an act exceeding the provisions of the charter would depend upon the principles determining a partner's ability to bind the firm. The stockholders would enjoy limited liability only for acts done within the powers conferred by the charter; for acts done by them in excess of these powers they would remain liable as partners to an unlimited extent. This result, it is believed, has been reached by no decision. Upon this hypothesis as to the nature of a corporation, the doctrines that a corporation has an existence outside the state of charter, and has the capacity to perform legally unauthorized acts, would be at least superfluous; the acts performed outside the state of charter or in excess of authority would be valid acts of a partnership. See MORAWETZ, PRIVATE CORPORATIONS, 2d ed., § 748.

PRINCIPAL'S LIABILITY TO THIRD PERSONS FOR AGENT'S DECEIT. — In the development of the law of agency numerous conflicting decisions have been reached as to the principal's liability for an agent's deceit where there has been no authorization express or implied. Much of this confusion seems to have arisen from the tendency of the courts to take it for granted that the action of deceit is to be governed by the rules applying to contracts made by an agent rather than by those controlling in cases of tort. In presenting a careful examination of the cases and working out a theory by which to test the decisions, a recent writer has helped to clarify the situation. *Liability for the Unauthorized Torts of Agents*, by Wm. R. Vance, 4 Mich. L. Rev. 199 (Jan., 1906).

Though the title to the article would indicate a broader scope, Professor Vance has confined his discussion mainly to actions for deceit. The question commonly arises in litigation for damages caused by the over-issue of stock certificates, or by the fraudulent issue of bills of lading. The agent of a corporation, for example, having charge of the issue of certificates of stock, for his own purposes issues spurious certificates, which are presented to a bank as collateral for a loan. The officers of the bank, on being informed by the agent that the certificates are genuine, advance the money. Or, the agent of a railway company fraudulently issues a bill of lading without having received the goods described therein. This bill comes into the hands of an innocent indorsee for value, who upon the non-delivery of the goods brings an action of deceit against the company. In these cases there is no apparent authority given by the principal to do the acts complained of. Yet some states have allowed recovery on the ground that the agent had an apparent authority by his own representations, so that the principal is now estopped to deny lack of authority in him. Professor Vance in saying that there can be no estoppel against the principal based on an unauthorized representation of authority made not by himself but by the agent, makes a proper criticism of this reasoning.[1] On the other hand, the English doctrine, followed by the Supreme Court in the case of bills of lading and approved of in the case of fraudulent issue of stock, denies liability because of the absence of any authority whatever in the agent. *Grant* v. *Norway*, 10 C. B. 665; see *Friedlander* v. *Texas & Pac. Ry. Co.*, 130 U. S. 415. If any authority from the principal is necessary in order to create liability, these cases are supportable. Professor Vance, however, submits that since the act complained of is not contractual in its nature, but tortious, the question of liability should depend not upon authority conferred, or apparently conferred, but solely on whether the agent is acting in the course of his employment — the ordinary rule in cases of torts.

The difficulty, then, is to determine whether the agent is in fact acting within the scope of his employment. In the case of the over-issue of stock it would

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[1] The result in many of the cases may, however, be supported on the ground that the principal was negligent. See *N. Y. & N. H. R. R. Co.* v. *Schuyler*, 34 N. Y. 30.

appear to be plainly the duty of the agent to give just such information as that upon which the holder of the spurious stock has relied, since one of the chief purposes for which a corporation is organized is to enable the shares to be transferred freely. The very essence of such a certificate is an assurance to the world that it will be transferred on the books of the company upon the surrender of the certificate. If a bill of lading is to be regarded simply as a receipt to enable the consignor to trace and receive his goods as an incident of transportation, a representation by the agent to third persons would be outside the scope of the employment and would not bind the principal. See *C. N. O. & T. P. Ry. Co.* v. *Citizens' National Bank*, 56 Oh. St. 351. But in view of the widespread use of the bill of lading as a symbol of property, it seems better to regard it as analogous to a negotiable instrument, relied upon by third parties in much the same way as stock certificates. Professor Vance's conclusions that the principal should be liable in both classes of cases seem, accordingly, correct.

One limitation must, however, be made to the theory that the rules governing the principal's liability for deceit by the agent are the same as those which govern liability for any other tort. It should be noticed that deceit is an anomalous tort, since the situation created resembles that created when the agent makes a contract with a third party in that the latter acts upon a representation of the agent, and thus in a sense co-operates to cause the damage. See HUFFCUT, AGENCY, 2d ed., 12, 13. Consequently, though the question of the principal's liability for the agent's deceit does not depend primarily upon authority conferred as in contract, yet if it appears that the third party knew that the principal had forbidden such a representation, he should not be allowed to hold the principal, because he is not dealing with the agent as agent, and hence is not deceived. See *N. Y. Life Ins. Co.* v. *Fletcher*, 117 U. S. 519.

NATURALIZATION. — An article by Henry Stockbridge is called forth by the recent Act of Congress denying citizenship to aliens of anarchistic inclinations, 32 U. S. Stat. at L. 1222 (March, 1903), and by the rulings of two state courts, — one in New York, which declared that it would naturalize nobody unable to speak English, and one in Pennsylvania refusing to admit to citizenship anybody who could not prove that he had abstained from participation in the coal-strike riots. *The Law of Naturalization*, by Henry Stockbridge, 17 Green Bag 644 (Nov. 1905); 13 Am. Lawyer 419 (Oct. 1905). The author summarizes the history and present state of the law of naturalization, comments on its lax enforcement, and concludes that neither the statute nor the rulings above referred to were really extensions of the pre-existing law. Congress, under the clause of the Constitution giving it power to establish a uniform rule of naturalization, has enacted that every applicant for admission should prove that during the five years of his probation "he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the peace and happiness of the same." U. S. Rev. Stat. § 2165. It is to be noticed that the test in the revised statutes is objective. The applicant must prove that he has *behaved* as one possessing the attributes mentioned. Mr. Stockbridge is, therefore, not strictly accurate when he says that the statute requires the applicant actually to possess such attributes. It is true that in a Texas state court an applicant was rejected because his socialistic views as to the ownership of property were thought inconsistent with the Constitution, though no objection was raised to his behavior. See *Ex parte Sauer*, 81 Fed. Rep. 355 (note). This case is, however, inconsistent with the result of a later case in a United States district court in the same state. See *Re Rodriguez*, 81 Fed. Rep. 337. There an honest, industrious, and well-behaved Mexican was naturalized, though he could neither read nor write, and was "lamentably ignorant." The court said of him that "by his daily walk . . . he . . . emphasized his attachment to the principles of the Constitution," thus plainly abandoning the subjective test. The statute of 1903 made the distinct advance of forbidding